



# United States Department of the Interior

## NATIONAL PARK SERVICE

Pacific West Region  
909 First Avenue, Fifth Floor  
Seattle, Washington 98104-1060



IN REPLY REFER TO:  
ER 07-0242

June 20, 2007

Assistant Regional Administrator  
Protected Resources Division  
Northwest Regional Office  
National Marine Fisheries Service  
Attn: Lynne Barre  
7600 Sand Point Way NE  
Seattle, WA 98115  
orca.plan@noaa.gov

Dear Lynne:

The National Park Service ("NPS" or "we") has reviewed the advance notice of proposed rulemaking published in the Federal Register on March 22, 2007 by the National Oceanic and Atmospheric Administration ("NOAA"). We would like to offer the following comments for your review and consideration:

San Juan Island National Historical Park ("San Juan Island NHP") borders the primary summer habitat of the Southern Resident Killer Whales, which were recently classified as endangered. The park hosts many visitors who watch these whales, principally from the southern shore of the American Camp unit on San Juan Island. We also observe many of the potentially harmful activities engaged in by boaters while watching whales from their vessels, both motorized and non-motorized, that are mentioned in the Federal Register notice. We want to commend responsible whale watch operators for their leadership in protecting orcas during recent years.

Boating activities that are conducted too close to the whales have detrimental effects. Such conduct frequently occurs despite very heavy emphasis on education, voluntary guidelines for whale watchers, and voluntary no-boat areas. Based on many years of experience and close participation in forums regarding these issues, we strongly encourage NOAA to establish clear, mandatory regulations to protect the orcas from human disturbance. Unfortunately, voluntary guidelines are not enough with the already high and increasing number of boats, and in light of the substantial risk that even a small percentage of boaters present when they are unaware of or deliberately choose to ignore the guidelines.

We would like to offer the following specific comments regarding your proposed rule making:



- 1) Establish a mandatory boat exclusion area that includes and expands the current voluntary boat exclusion area east along the American Camp shoreline to all the way to Cattle Point. This exclusion would apply when whales are present.
- 2) Codify the Be Whale Wise guidelines into regulations. The most critical of these is to establish an approach limit of at least 100 yards.
- 3) Establish cooperative agreements with other agencies for enforcement of whale watch regulations, including San Juan County, Washington State, the United States Fish and Wildlife Service, and the National Park Service.
- 4) Strengthen education programs by continuing to work closely with interested organizations. San Juan Island NHP is happy to partner with NOAA, the Whale Museum, and others in these efforts.

Thank you for the opportunity to provide these comments. If you have any questions, please contact Peter Dederich, San Juan NHP Superintendent, National Park Service, (360) 378-2240, [Peter\\_Dederich@nps.gov](mailto:Peter_Dederich@nps.gov), Post Office Box 429, Friday Harbor, Washington, 98250.

Sincerely,

*/s/ signed original on file*

Rory D. Westberg  
Deputy Regional Director

Cc: Peter Dederich, Superintendent, San Juan Island NHP



State of Washington

**Department of Fish and Wildlife**

Mailing Address: 600 Capitol Way N • Olympia WA 98501-1091 • (360) 902-2200; TDD (360) 902-2207  
Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia WA

June 20, 2007

Assistant Regional Administrator  
Protected Resources Division  
Northwest Regional Office  
National Marine Fisheries Service  
7600 Sand Point Way Northeast  
Seattle, Washington 98115

Dear Sir/Madam:

Thank you for the opportunity to comment on the need to establish federal regulations to protect killer whales from inappropriate whale-watching behavior and vessel-operation practices. Killer whales are classified as endangered under Washington state law; thus, the Washington Department of Fish and Wildlife (WDFW) is fully supportive of federal efforts to protect the species. As you are aware, WDFW enforcement officers have been engaged in whale outreach activities in the San Juan Islands during the past three years. State efforts meant to monitor interactions between whales and the public have involved the use of marked patrol boats staffed with uniformed personnel. Patrols and investigations into incidences of whale harassment have been conducted independently and jointly with NOAA Enforcement Agents.

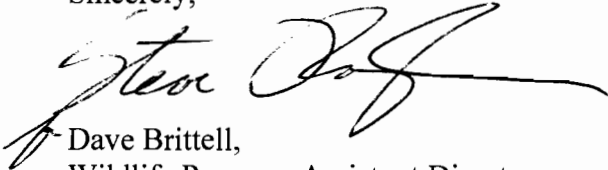
WDFW fully supports the need to enact protective regulations pertaining to whale watching and vessel operating protocol when the animals are present, and we encourage NOAA Fisheries to do so. Although the "Be Whale Wise" guidelines have had some measure of success in educating the public and reducing inappropriate boater behavior around the whales during the past decade, it seems clear that the guidelines are no longer sufficient. To be clear, continued inappropriate behavior cannot be punished under the "guidelines." It is difficult to prosecute a "take" violation under the Marine Mammal Protection Act (MMPA). Such cases are difficult to prove, and often only the most egregious of acts qualify as an offense. Because of this, WDFW is currently drafting a new state regulation that will address vessel operations near the whales. Specifics of the regulation are still under discussion but will likely involve restrictions on vessel speeds and approach distances. WDFW anticipates that this new regulation will be in effect for the summer boating and main whale-watching season in 2008.

Unfortunately, because of restrictions related to the MMPA, the State's regulation will be applicable only to southern resident killer whales and not to other killer whale ecotypes (i.e., transients, offshores), which are also susceptible to the same types of inappropriate vessel operation practices. We believe that state and federal regulations should apply to all killer whale

Assistant Regional Administrator  
June 20, 2007  
Page 2 of 2

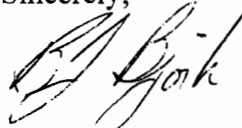
ecotypes. Our understanding is that this might be possible through an exemption by the Secretary of Commerce, similar to that which was granted to the State of Hawaii for humpback whale protection from parasailing activities. This will close a significant potential loophole and prohibit boat operators from successfully arguing that they thought they were watching one of the other ecotypes.

Sincerely,



Dave Brittell,  
Wildlife Program Assistant Director

Sincerely,



Bruce Bjork,  
Enforcement Program Assistant Director

cc: Harriet Allen  
Gary Wiles  
Steve Jeffries



June 20, 2007

Assistant Regional Director  
Protected Resources Division  
National Marine Fisheries Service  
Northwest Region  
7600 Sand Point Way NE  
Seattle, WA 98115  
Email: [orca.plan@noaa.gov](mailto:orca.plan@noaa.gov)

**Re:** Comments of Western States Petroleum Association on Advance Notice of Proposed Rulemaking Concerning Protective Regulations for Killer Whales in Puget Sound, Washington

Dear Sir or Madam:

The Port of Seattle ("the Port") appreciates the opportunity to provide the National Marine Fisheries Service ("NMFS") with the following comments concerning potential protective regulations for Southern Resident killer whales (*Orcinus orca*). See 72 Fed. Reg. 13464 (March 22, 2007). The Port is interested in any limitations on vessel operations to the extent they may adversely affect any of the customers and tenants who use Port facilities, such as cargo ships, cruise vessels, fishing vessels, tugs and barges, U.S. Coast Guard vessels, and so forth. The Port is concerned with any regulatory mechanisms that might affect the continued safe, secure, efficient, and environmentally-responsible operation of our customers' vessels. In particular, we are concerned that the approach rules, if implemented for cargo and other large vessels, would create unpredictable and unsafe vessel traffic patterns likely increasing the risk of collisions at sea.

The Port is in receipt of a courtesy copy of a comment letter that will be submitted to NMFS from the Western States Petroleum Association (WSPA), signed by Frank Holmes. The Port believes WSPA's letter cogently and thoroughly lays out all the points that we would have raised. In particular, we fully agree with the following comments made by WSPA:

- It makes sense to delay issuance of any protective regulations until after the draft recovery plan is finalized

P.O. Box 1209  
Seattle, WA 98111-1209 USA  
(206) 728-3000  
FAX (206) 728-3252  
[www.portseattle.org](http://www.portseattle.org)



Vessel Operation Comment Letter  
June 20, 2007  
Page 2

- NMFS needs to conduct further research to determine whether vessel noise associated with deep draft vessels is causing direct injury or mortality to killer whalers. Until the agency has this threshold level of evidence, it should not be regulating these types of vessels
- NMFS should take the same approach here as it has taken with humpback whales, *i.e.* to exempt certain vessels from any approach regulations. This exemption should include, at a minimum, vessels with limited maneuverability, and state, federal and local governmental vessels.
- NMFS should carefully discuss any proposed regulations with those agencies with primary jurisdiction over navigation, specifically the U.S. Coast Guard. In addition, the impact on the shipping industry as a whole has not been thoroughly analyzed.

Thank you for this opportunity to provide comments on this ANOPR. Please feel free to contact me at (206) 728-3818 if you have any questions regarding these comments or recommendations.

Sincerely,



**Stephanie Jones**  
Seaport Environmental Manager

cc: Frank Holmes, WSPA  
Eric Johnson, WPPA



**Washington State  
Department of Transportation**

**Douglas B. MacDonald**  
Secretary of Transportation

**Transportation Building**  
310 Maple Park Avenue S.E.  
P.O. Box 47300  
Olympia, WA 98504-7300

360-705-7000  
TTY: 1-800-833-6388  
[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

June 5, 2007

Assistant Regional Administrator  
Protected Resources Division  
Northwest Regional Office  
National Marine Fisheries Service  
7600 Sand Point Way NE  
Seattle, WA 98115

**ATTN:** Docket No. 070125020-7020-01; 50 CFR Part 216, Protective Regulations for Killer Whales in the Northwest Region under the Endangered Species Act and Marine Mammal Protection Act, Advanced notice of proposed rule making.

Dear Assistant Regional Administrator,

Washington State Department of Transportation (WSDOT) and Washington State Ferries (WSF) would like to take this opportunity to submit comments regarding the advanced notice of proposed rule making, (50 CFR Part 216, March 22, 2007), that seeks information and comments regarding the option of regulating vessel interaction with Southern Resident Killer Whales.

Washington State Ferries is the largest ferry system in the United States carrying over 24 million passengers last year on 26 vessels through 20 terminal facilities. As an extension of the State highway system, WSF provides a critical transport and economic lifeline to many communities in the Puget Sound region. WSF also serves as the largest tourist attraction for Washington State.

As a community lifeline and the largest tourist attraction in Washington State, WSF is committed to the flourishing health of the Puget Sound ecosystem. The Southern Resident Orca population is a critical part of this ecosystem and like the ferry system, is important to the local economy, and a beloved icon of national and international audiences. In ongoing efforts to be good stewards to the marine environment, WSF currently uses the Be Whale Wise guidelines to guide vessel operations during Orca encounters.

It is in all of our interests to see that rule development provide meaningful advances in Orca protection while avoiding unnecessary limitations on ferry vessel movements. The following comments focus on the preliminary list of options for consideration and comment, and what potential affects these options could have on ferries' operations.

**List of Options:**

***"Codify the current Be Whale Wise marine mammal viewing guidelines"***

As stated above, WSF currently uses the Be Whale Wise guidelines in its vessel operations. Codifying these guidelines would not likely affect WSF vessel operations.

Because of the maneuvering constraints due to the draft, size and mass of Washington State Ferry vessels, it is important that any adopted rule governing vessel maneuvering near Orcas is worded so that there is no conflict with the vessel master's obligation to make reasonable and safe maneuvers, in accordance with "Rules of the Road" and safe navigational practices.

***"Establish minimum approach rule"***

If the recommended minimum standards compare to the Be Whale Wise guidelines, WSF does not anticipate any impact on current operations.

***"Prohibit Vessel Activities of Concern"***

If prohibited vessels are defined as suggested in the notice, then this management tool is not likely to inhibit WSF operations.

***"Establish Time Area Closures"***

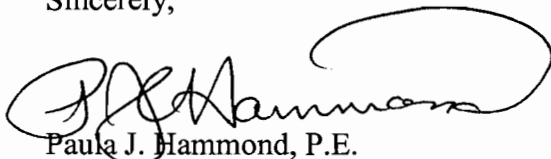
If area closures or speed restrictions impinge on established ferry routes, this could significantly impact WSF service to select communities. If NMFS chooses to pursue this management option, WSF would request a direct meeting with the NMFS to discuss how to benefit the Orca population and maintain WSF service..

***"Operator permit or certification program"***

The example used in the notice does not indicate whether the proposed restrictions would also apply to ferries or ocean going commercial vessels that may transit near Orca populations incidentally, however not intentionally. If this management option is adopted and restrictions that would apply to ferries are greater than the current Be Whale Wise guidelines, then WSF should meet directly with NMFS to discuss options for minimizing the regulations impact on ferry route service.

WSDOT and WSF appreciates the opportunity to comment. If there are questions regarding our comments, please contact Jonathan Olds, Washington State Ferries' Environmental Program Manager, at 206 515-3911 or [oldsj@wsdot.wa.gov](mailto:oldsj@wsdot.wa.gov).

Sincerely,



Paula J. Hammond, P.E.  
Chief of Staff

PJH:jo

Cc: John Horsley, AASHTO Executive Director  
Steve Reinmuth, WSDOT  
Larry Ehl, WSDOT





**San Juan County  
Marine Resources Committee**

PO Box 947  
Friday Harbor, WA 98250  
Email: [info@sjcmrc.org](mailto:info@sjcmrc.org)  
Web site: [www.sjcmrc.org](http://www.sjcmrc.org)  
360-370-7592

June 29, 2007

Donna Darm  
Assistant Regional Administrator  
Protected Resources Division  
Northwest Regional Office  
National Marine Fisheries Service  
7600 Sand Point Way NE  
Seattle WA 98115

Dear Ms. Darm:

As an advisory body to the San Juan County Council on topics relevant to the marine environment, the San Juan County Marine Resources Committee (MRC) submits the following comments on the NOAA *Advanced Notice of Proposed Rulemaking* (50 CFR Part 216) to reduce impacts of vessels to the southern resident orca whale distinct population segment. The MRC recently completed three-year conservation planning and community outreach process for San Juan County's Marine Stewardship Area<sup>1</sup>. In this work we identified vessel related stressors to marine mammal (and other) conservation targets including chronic oils spills, major oil spills, persistent chemical pollutants and wildlife disturbance. If the stewardship area plan is adopted by the San Juan County Council in July, the MRC will be conducting extensive outreach activities over the next two years as implementation begins. We believe that regulatory mechanisms and participation of local, state, tribal and federal agencies will also be required to ensure orca and marine ecosystem recovery.

The MRC has worked closely with and helps to support the outreach and monitoring efforts of The Whale Museum's Soundwatch Boater Education Program. Data from this long term monitoring program characterizing vessel trends around the Southern Resident Killer Whales indicate high concentrations of commercial and recreational vessels with orcas for most of the day during the peak summer months ( May-September) in the waters of San Juan County<sup>2</sup>. This area has been determined as Core Summer Habitat for

---

<sup>1</sup> San Juan County Marine Stewardship Area Plan. 2007. Marine Resources Committee, Friday Harbor, WA

<sup>2</sup> Koski, K. 2004. The Soundwatch Boater Education Program: trends in vessel traffic with southern resident killer whales. The Whale Museum, Friday Harbor, Washington.

the Southern Resident Killer Whales under the Critical Habitat Designation under the ESA listing.

In addition, during the summer of 2006, the MRC conducted a pilot study<sup>3</sup> to quantify vessel use within marine basins along coastal San Juan Islands, identify vessels by type and usage, establish spatial and temporal distributions, and determine vessel concentrations. Results from both these monitoring projects have direct implications for the management of orcas, as areas with high vessel traffic can be identified (e.g. Fig. 1) and overlaid with whale distribution data to identify specific geographic regions for increased protections such as reduced vessel speed and exclusionary zones. .

The MRC has reviewed the NOAA preliminary list of potential regulatory measures and offers the following specific comments:

- 1) Codify current 'be whale wise' guidelines: the MRC supports this action. Implementation of voluntary guidelines has resulted in increased boater awareness and improved behavior by many vessel operators. However, multiple violations are documented every year. The MRC agrees that strengthening the guidelines via legal authority will increase their effectiveness, thereby increasing protection of the orcas.
- 2) Minimum approach rule: the MRC supports this concept, and encourages application of conservative minimum distances to ensure adequate protection.
- 3) Prohibit vessel activities of concern: the MRC supports prohibition of the listed vessel activities (herding, surrounding, positioning in the path, separating calves from adults, approaching at high speeds and running vessel through a group of whales) and encourages strong local, state and federal coordination to ensure adequate enforcement.
- 4) Establish time/area closures: the MRC supports using information on whale and boater use patterns to establish protective areas. The MRC has been a strong supporter of the 'no-go zone' on the west side of San Juan Island and our vessel study indicates that additional areas such as northern and northwestern San Juan Island should also be considered when evaluating potential protective actions due to the high volume of vessel traffic in this area also utilized by the whales.
- 5) Operator permit/certification program: the MRC would support exploring such a program.
- 6) Outreach tools: The MRC strongly supports education and outreach to foster a stewardship ethic among boaters and compliance with new protective regulations.

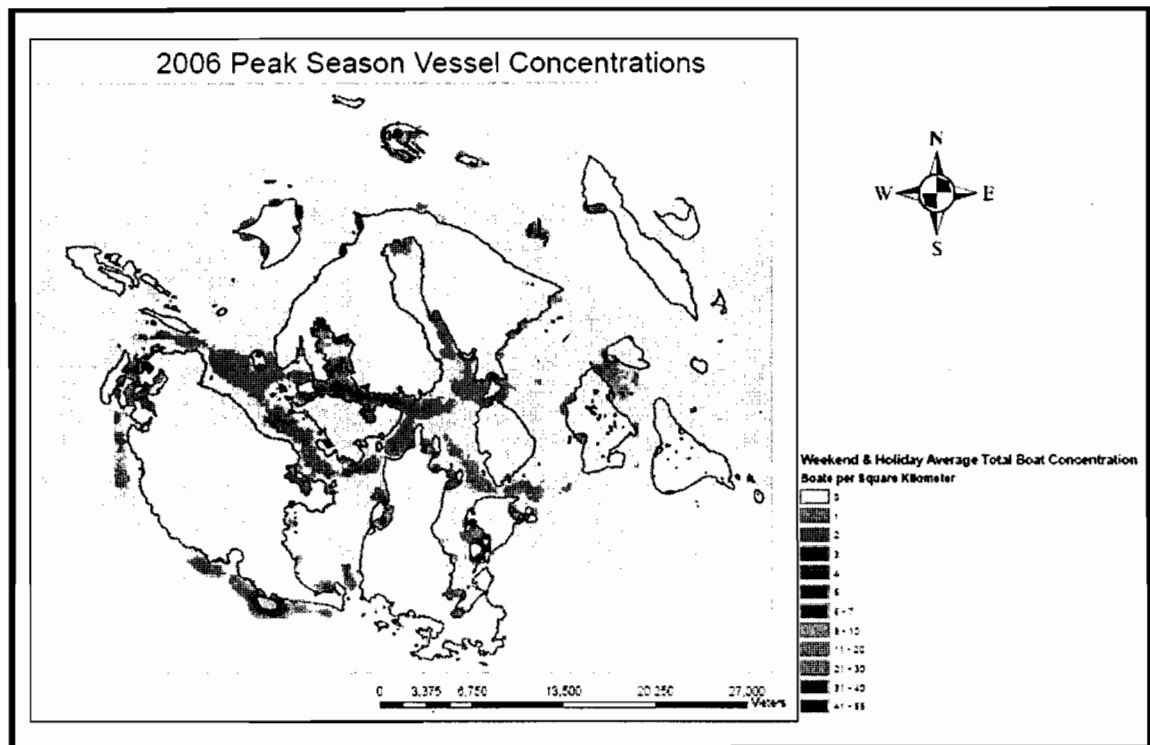
In addition, our planning efforts indicated that there may be several other potential impacts from boating besides navigational concerns, which could be endangering the Southern Resident Killer Whale population. These nonpoint source impacts become particularly significant during periods of especially high traffic volumes when whales are

---

Koski, K. 2006. The Soundwatch Boater Education Program: trends in vessel traffic with southern resident killer whales. The Whale Museum, Friday Harbor, Washington.

<sup>3</sup> San Juan County Pilot Sea Vessel Traffic Study. 2007. J. Dismukes for the San Juan County Marine Resources Committee.

also present. Our peak season pilot vessel study indicated nearly 1,000 boats on the waters within San Juan County at any time during a weekend day and approximately 700 boats on the water during a weekday. Because vessels are arriving from ports throughout the Puget Sound and Georgia Straits Basin, monitoring and management of vessel effects should be undertaken on a regional scale.



**Figure 1. Peak season vessel concentrations from Dismukes vessel use study, 2007.**

Sincerely,

Kit Rawson, Chair

Cc: San Juan County Council  
Pete Rose, County Administrator